90-838

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

RUDOLPH P. KUROWSKI

Petitioner

v.

CITY OF BRIDGEPORT

STATE OF CONNECTICUT

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

Rudolph P. Kurowski
73D River Bend Rd.
Stratford, Connecticut 06497
(203) 378-6491

*Pro-Se

QUESTIONS PRESENTED

1) Did the Connecticut Supreme Court err in refusing to hear the claim brought before them allowing the Appellate Court to determine that a violation of General Statutes 7-433C and the violation of the doctrine of collateral estoppel did not constitute adequate grounds to vacate an arbitrable award and because the submission in this instance was unrestricted?

The City of Bridgeport was on the verge of bankruptcy and the State of Connecticut was about to take over. The State of Connecticut assigned unscrupulous arbitrators to my case and, even though I received two workmen's compensation awards indicating I was disabled from police duties, the arbitrators ruled that the medical evidence was not credible. The Connecticut courts did not favor anyone who brought claims against the City of Bridgeport.

2) Whether a decision of a state's highest

court, coupled with an Appellate Court decision and a state statute are sufficient to establish a "well-defined and dominant public policy"?

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CASES

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM. 1990

RUDOLPH P. KUROWSKI,

Petitioner,

v.

CITY OF BRIDGEPORT

STATE OF CONNECTICUT

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

Petitioner Rudolph P. Kurowski respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Connecticut entered in this proceeding of September 4, 1990.

OPINION BELOW

The opinion of the Supreme Court of Connecticut, reported on June 7, 1990 and May 10, 1990, is reprinted in Appendix A. The opinion of the Connecticut Appellate Court, entered on March 13, 1990, (7847) (21 Conn.App.28), is in Appendix B. The bench decision of the Connecticut Superior Court, entered on February 7, 1989, is reprinted in Appendix C. The opinion of the Connecticut State Board of Mediation and Arbitration entered on November 20, 1987 is reprinted in Appendix D.

JURISDICTION

The judgment of Supreme Court of Connecticut, affirming the Superior Court's judgment and the Appellate Court's decision on appeal was entered on June 7, 1990. This petition for certiorari is filed within ninety days of the date of the Connecticut Supreme Court's judgment, in compliance with Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment XIV:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any

state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 7-433C, Connecticut General Statutes, Benefits for policemen or firemen disabled or dead as a result of hypertension or heart disease.

"...in the event a regular member of a paid municipal police department...suffers, either off-duty or on-duty, any condition or impairment of health resulting in his temporary or permanent, total or partial disablity...he shall receive the same (amount of) retirement benefits which would be paid under (his retirement) system if such disability...arose out of and in the course of his employment.

STATEMENT OF THE CASE

This case is simple. It is a "travesty of justice". On April 1, 1969, Rudolph P. Kurowski, twenty-six years of age, became employed as a regular uniformed member of the Bridgeport Police Department. Prior to commencing employment with the police

department, I underwent a pre-employment physical which showed no evidence of hypertension or heart disease. Twelve years later, on April 13, 1981, while still employed by the Bridgeport Police Department, a medical examination revealed the presence of hypertension. Further medical examination in May, 1982 revealed essential hypertension and should not return to police duties. (A-35, 36).

On June 20, 1982, Petitioner applied to the Board of Police Commissioners of the Bridgeport Police Department for a disability pension under the Heart and Hypertension Act, General Statutes Section 7-433C. (A-20). On July 13, 1982, the application was heard by the Board of Police Commissioners and denied on the grounds that the medical evidence did not support a disability retirement, even though my doctors and the city doctor said I should retire from the force because of essential hypertension. Petitioner immediately filed a grievance regarding this denial with the Connecticut Board of Mediation and Arbitration.

Earlier that year in February, 1982, Petitioner had filed an application for Section 7-433C benefits with the State of Connecticut Worker's Compensation

Commission. On July 15, 1982, the Commission held a hearing on the compensation claim under section 7-433C. On November 5, 1982, the Commission issued an award granting total disability benefits in accordance with General Statutes Section 7-433C. (A-35, 36). In the award, the compensation commissioner found that:

A) On April 13, 1981, while still employed by the City of Bridgeport as a police officer, medical examination revealed the presence of hypertension; and

B) Further medical examination in May, 1982, revealed essential hypertension and should not return to police duties.

On March, 1984, Petitioner received the first supplemental finding and award. In the award, the compensation commissioner found that:

A) Petitioner has been found to be disabled from police duties due to a condition of essential hypertension.

B) The Claimant is found to have reached maximum medical improvement as of November 18, 1983, and is found to have a twelve and one-half percent (12 1/2%) Permanent impairment of

the cardiovascular system due to his essential hypertension.

The 1984 award of the Worker's Compensation Commission was never appealed by Bridgeport, and is now, a final judgment. (A-37, 38).

On September, 1984, an action was brought before the Superior Court claiming breach of contract and denial of due process in regard to a property right (Disability pension). (A-39, 43).

The motion to be heard in Superior Court was denied by a Judge who was ousted by the legislature because of incompetency. He ruled that my claim for a disability pension should be heard by an administrative agency.

On November 20, 1987, the Board of Arbitration and Mediation, the members being assigned by the State of Connecticut, issued an award that deliberately and maliciously denied me my disability pension by saying that they did not believe the medical evidence. There were eleven medical exhibits, two Worker's Compensation Awards indicating that the Petitioner was disabled from police duties, which the City of Bridgeport never disputed. (A-14, 19).

At this time, the City of Bridgeport was in financial difficulty and the State of Connecticut was rumored to take over daily operation for the City of Bridgeport. The unscrupulous arbitrators assigned to my case by the State of Connecticut were city officials from a neighboring city (New Haven) and its chairperson - Frank Logue, ex-mayor of New Haven, who was biased toward Heart and Hypertension.

On December 18, 1987, Petitioner filed an application in the Superior Court for the Judicial District of Fairfield at Bridgeport seeking an order of the court pursuant to General Statutes Section 52-418 (a)(4) as amended by P.A.87-19 vacating the arbitral award.

On February 7, 1989, after a hearing on the two foregoing applications, the trial court issued a memorandum decision denying the plaintiff's application to vacate the arbitral award. (A-8, 12). In Judge Thompson's ruling, even though it was patently clear from the arbitral decision that by finding the petitioner's medical evidence to be lacking in credibility, the unscrupulous arbitrators had blatantly violated the crucial statutory presumption of

Section 7-433C, the Judge held nonetheless that the arbitral decision in this case did not violate Section 7-433C of the General Statutes, or the public policy of the state embodied therein. Avco Corporation v. Preteska. (A-44, 48). Moreover, even though it was established without dispute that the Worker's Compensation Commissioner in November, 1982, has issued an award in the petitioner's favor, in which the compensation commissioner had determined that the petitioner's heart condition was such that he should not return to police work, the trial court held nonetheless that the arbitral decision in case, did not violate the doctrine of collateral estoppel.

Finally, the court held that because the case had been submitted for arbitration on a "unrestricted" basis, the court was powerless to reverse the award even assuming the arbitrators had committed errors.

This is a travesty of justice. All medical evidence undisputed, two compensation awards undisputed, and yet, the arbitrators say they do not believe the evidence and deny my application for a disability pension is not due process of law. The State of

Connecticut is making erroneous excuses to protect the City of Bridgeport and is violation of the Fourteenth Amendment.

APPELLATE COURT DECISION

On March 13, 1990, petitioner's application to vacate an arbitration award denying a claim for disability pension benefits, brought to the Superior Court in Fairfield, and then to the Appellate Court was denied. No error was found. (A-3, 7).

CONNECTICUT SUPREME COURT DECISION

On April 20, 1990, petitioner files a petition for certification by the Connecticut Supreme Court asking the court to review the decision of the Appellate Court. The statement of questions presented for review were as follows: (A-21, 19).

A) Did the Appellate Court err in determining that a violation of General Statutes 7-433C and the violation of the doctrine of collateral estoppel did not constitute adequate grounds to vacate the arbitrable award in this case because the submission in this instance was unrestricted?

B) Did the Appellate Court err in not looking into

the public policy of this State?

C) Did the Appellate Court err in allowing equal constitutional rights to be heard by arbitrators?

D) Did the Appellate Court err in allowing "Unrestricted Submission" to be constitutional? The arbitrators can say "we do not believe the evidence" and the employee could suffer the rest of his/her life.

The Connecticut Supreme Court flatly denied to hear any of these claims. Remember, the State of Connecticut is working closely with the City of Bridgeport because of financial problems. The petitioner is clearly entitled to a disability pension.

On June 7, 1990, petitioner's Motion for Reconsideration is denied. (A-30, 34).

The State of Connecticut court system is not going to give me a look as long as the City of Bridgeport is having financial problems.

REASON FOR GRANTING WRIT

THE CONNECTICUT SUPREME COURT HAS ADOPTED AND APPLIED AN ERRONEOUS RULE OF THE FOURTEENTH AMENDMENT WHICH CANNOT BE RECONCILED.

This Case is unique and represents a theory of a City who is fighting financially to survive and a State waiting in the wings to help dig out the City from their financial problems because of incompetent administrators. I am stuck in the middle of this saga. I am entitled to a disability pension. I am a disabled policeman who has proved beyond a reasonable doubt by presenting two Worker's Compensation Awards which clearly showed that I was disabled from the police force yet denied a disability pension by arbitrators who said the evidence was tainted.

This case is particularly well-suited for review by this Court, because the Connecticut Courts became more interested in financial reviews rather than legal views.

Also, the issue of "Unrestricted Submission" which gives the arbitrator the right to rule on legal issues, which that are not qualified to do, clearly violates due process of law and equal protection of the laws.

CONCLUSION

For the foregoing reasons, the Petition for a

Writ of Certiorari to review the judgement of the Connecticut Supreme Court should be granted.

Dated: Stratford, Connecticut

September 4, 1990

Respectfully submitted,

Rudolph P. Kurowski
73D River Bend Road
Stratford, Connecticut 06497
(203) 378-6491

*Pro-Se

APPENDIX A

Opinions of the

Supreme Court of Connecticut

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-89-1140

AFSCME, COUNCIL 15, LOCAL 1159 ET AL

v.

CITY OF BRIDGEPORT

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff Rudolph P. Kurowski for certification to appeal from the Appellate Court (21 Conn. App. 28), it is hereby ordered that said petition be, and the same is hereby dismissed.

BY THE COURT

_____

ASSISTANT CLERK-APPELLATE

Dated: May 10, 1990

Notice to: 5/10/90

Clerk, Superior Court, Fairfield J.D. - CV87-0246022

Clerk, Appellate Court

Rudolph P. Kurowski, pro se

Bridgeport City Attorney

Rudolph P. Kurowski in support of petition.

STATE OF CONNECTICUT

SUPREME COURT

NO. A.C. 7847

AFSCME, COUNCIL 15, LOCAL 1159 ET AL

v.

CITY OF BRIDGEPORT : JUNE 7, 1990

ORDER

THE MOTION OF THE APPELLANT, RUDOLPH P. KUROWSKI, FILED MAY 18, 1990, FOR RECONSIDERATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DISMISSED.

BY THE COURT

_____

CHIEF CLERK

NOTICE SENT: 6-7-90

RUDOLPH P. KUROWSKI

BRIDGEPORT CITY ATTORNEY

CLERK, FAIRFIELD J.D.

CV87-0246022

HON. BRUCE THOMPSON

REPORTER OF JUDICIAL DECISIONS

APPENDIX B

Opinion of the

Connecticut Appellate Court

AFSCME, COUNCIL 15, LOCAL 1159, ET AL. *V.*

CITY OF BRIDGEPORT

DUPONT, C.J., BORDEN AND FOTI, JS.
Submitted on briefs November 9, 1989 -
decision released March 13, 1990

Application to vacate an arbitration award denying a claim for disability pension benefits made by the plaintiff police officer, brought to the Superior Court in the judicial district of Fairfield, where the defendant filed an application to confirm the award; thereafter, the matter was tried to the court, *Thompson, J.;* judgment confirming the award, from which the plaintiff, Rudolph P. Kurowski appealed to this court. *No error.*

Gary A. Mastronardi filed a brief for the appellant (plaintiff Rudolph P. Kurowski).

Thomas K. Jackson, associate city attorney, filed a brief for the appellee (defendant).

PER CURIAM. The plaintiff Rudolph P. Kurowski appeals from the judgment rendered denying his application to vacate an arbitration award and granting the defendant's application for an order confirming the award. Kurowski claims that the trial court erred in confirming the arbitration award. We find no error.

---

[1] The plaintiffs are AFSCME, Council 15, Local 1159, and Rudolph P. Kurowski. The appeal is brought by Rudolph P. Kurowski only.

The question of Kurowski's standing to appeal was raised by this court, and at our request the parties filed simultaneous briefs addressed to the issue of whether the collective bargaining agreement between AFSCME, Council 15, Local 1159, and the City of Bridgeport provided for a personal right of the employee to seek arbitration. See *Flynn v. Newington*, 2 Conn. App. 230, 477 A.2d 1028, cert. denied, 194 Conn. 804, 482 A.2d 709 (1984); *Housing Authority v. Local 1161*, 1 Conn. App. 154, 468 A.2d 1251, cert. denied, 192 Conn. 802, 471 A.2d 244 (1984)

We conclude that the plaintiff has standing to seek to vacate the arbitral decision at issue. Section (7) of the pension certificate, which is part of the pension agreement, provides: "In the event *you and/or your dependents* do not receive the benefits promised and guaranteed by this pension certificate, *you and/or your dependents* may: ...(b) Initiate the grievance and arbitration procedure of the applicable bargaining agreement between the City of Bridgeport and Bridgeport Police Local 1159." (Emphasis added.)

The collective bargaining agreement was incorporated into and made part of the pension agreement. Thus, each individual covered by the pension agreement maintained a personal right to the grievance and arbitration procedures of the collective bargaining agreement.

The trial court, in a well reasoned memorandum of decision, found the following facts. The arbitration proceedings in question arose pursuant to a pension agreement between the defendant and the plaintiff union, the collective bargaining agent for Kurowski, a police officer. On July 13, 1982, Kurowski's application for a disability pension under § 2E of the pension agreement[2] was denied by the board of police commissioners.

On November 5, 1982, in a separate proceeding, the workers' compensation commissioner for the fourth district issued a finding and award in favor of Kurowski pursuant to General Statutes § 7-433c for temporary total disability benefits from April 13, 1981, to November 30, 1981. The commissioner further noted that medical examinations of the plaintiff revealed that in May, 1982, he had essential hypertension and should not return to police duties.

---

[2] Section 2E of the pension agreement provides in relevant part that an employee is entitled to retirement benefits if he "shall have become permanently disabled for the performance of his duties by reason of mental or physical disability resulting from injury received or exposure endured in the performance of his duty..."

On November 20, 1987, after a hearing de novo, the board of arbitration and mediation again denied Kurowski's application for a disability, finding that there was no credible evidence that he was disabled from the performance of his police duties.

At the heart of Kurowski's appeal is his assertion that the arbitrator exceeded his authority when he denied Kurowski's application for disability benefits (1) by failing to follow the dictates of General Statutes § 7-433c, and (2) by violating the doctrine of collateral estoppel in light of the workers' compensation commissioner's award. These claims do not, however, provide a proper foundation to support Kurowski's challenge of the arbitrator's authority.

The court's scope of review of an arbitrator's power to make an award is limited. *Bic Pen Corporation v. Local No. 134*, 183 Conn. 579, 583, 440 A.2d 774 (1981). "Arbitration is a creature of contract between the parties and its autonomy requires a minimum of judicial intrusion...The parties themselves, by an agreement of the submission, define the powers of the arbitrator...The submission constitutes the charter of the entire arbitration proceedings and defines and limits the

issues to be decided..When the parties have agreed to a procedure and have delineated the authority of the arbitrator, they must be bound by those limits..An application to vacate or correct an award should be granted where an arbitrator has exceeded his power, we need only examine the submission and the award to determine whether the award conforms to the submission." (Citations omitted.) Id., 583-84.

The issue submitted to the arbitration panel here was: "Did the Board of Police Commissioners of the City of Bridgeport err in denying pension benefits to Officer Rudolph Kurowski? If so, what shall the remedy be?" The trial court ruled that the award conformed to the submission and then even if the arbitrators committed errors of law, such errors are not reviewable. We agree.

"Unless the submission provides otherwise, an arbitrator has authority to decide factual and legal questions, and courts will not review the evidence, or, where the submission is unrestricted, the arbitrator's determination of legal questions." *P & G/O'Connell Joint Venture* v. *Chase Family Limited Partnership No. 3*, 203 Conn. 133, 153-54, 523 A.2d 1271 (1987).

Here, the submission contained no conditional language restricting the powers of the arbitrator, and it must therefore be classified as an unrestricted submission. Id. This classification left the arbitrator to determine the legal questions. Since the award here conformed to the submission, the plaintiff's claim that the arbitrator exceeded his powers is without merit.

There is no error.

APPENDIX C

Bench Decision of

The Connecitcut Superior Court

CV87 0246022	: SUPERIOR COURT
AFSCME, COUNCIL 15, LOCAL 1159 and RUDOLPH P. KUROWSKI	: JUDICIAL DISTRICT OF FAIRFIELD : AT BRIDGEPORT :
v.	:
CITY OF BRIDGEPORT	: FEBRUARY 7, 1989

MEMORANDUM OF DECISION

The plaintiffs bring this action to vacate an arbitration award issued on November 20, 1987. In such application the plaintiffs claim that the arbitrators exceeded their powers of so imperfectly executed them that a mutual, final and definite award upon the subject matter was not made. The plaintiffs, therefore, claim that the award should be vacated pursuant to section 52-418(a)(4) of the Conn. Gen. Stats.

The defendant has in turn filed an application for an order confirming the award of the arbitrators pursuant to section 52-417 of the Conn. Gen. Stats.

The arbitration proceeding in question arose pursuant to a pension agreement between the defendant and the plaintiff union, the collective bargaining

agent for the plaintiff, Rudolph P. Kurowski, a police officer. On July 13, 19982, Kurowski's application for a disability pension under Sec. 2E of the Pension Agreement was denied by the Board of Police Commissioners. On November 20, 1987, after a hearing de novo, the Board of Arbitration and Mediation denied the plaintiff Kurowski's application for a disability pension on the basis that there was no credible medical evidence that Officer Kurowski was disabled for the performance of his police duties.

Sec. 2E of the Pension Agreement provides in relevant part that an employee is entitled to retirement benefits if he "shall have become permanently disabled for the performance of his duties by reason of mental or physical disability resulting from injury received or exposure endured in the performance of his duty…."

On November 5, 1982, the Worker's Compensation Commissioner for the Fourth District issued a finding and award in favor of the plaintiff, Kurowski, against the defendant pursuant to section 7-433c of the Connecticut General Statutes. In that award the Commissioner awarded the plaintiff, Kurowski, tempo-

rary total disability benefits from April 13, 1981 to November 30, 1981. The Commissioner further noted in his award that medical examinations of the plaintiff revealed that in May, 1982 he had essential hypertension and should not return to police duties.

The plaintiff's primary claim is that the arbitrators' award violates the doctrine of collateral estoppel in light of the award of the Worker's Compensation Commissioner. The plaintiffs further claim that the arbitrators' award is in contravention of section 7-433c. Therefore, the plaintiffs claim that the award should be vacated pursuant to section 52-418(a)(4) of the Connecticut General Statutes.

Section 7-433c provides that in heart and hypertension cases policemen and firemen are not required to prove that any impairment of health, due to heart disease or hypertension, is work related in order to receive benefits equal to those afforded under the Worker's Compensation Act in the case of work related injuries or occupational disease. Likewise, section 7-433c entitles policemen or firemen in such cases to retirement benefits under a municipal retirement system to the same extent as such person would be

entitled to such benefits in the event such impairment of health was work related. Section 7-433c does not otherwise expand the extent of such retirement benefits, not preempt the retirement provisions under the applicable collective bargaining agreement. Revoir c. New Britain, 2 Conn. App. 255 (1984). In applying Section 2E of the Pension Agreement as they did, the arbitrators did not act in violation of section 7-433c nor did their action violate the public policy which may be embodied therein.

The plaintiff's claim relating to collateral estoppel is equally unavailing. While the Commissioner's award made reference to the medical evidence before him and its content, the award itself was restricted to temporary total benefits from April 13, 1981 to November 30, 1981. There was no express determination of permanent disability as required by Section 2E of the Pension Agreement. The issues between the parties in the arbitration proceedings and those in the worker's compensation hearing were not the same. Eligibility for benefits under the Worker's Compensation Act are different from those required under Sec. 2E of the Pension Agreement.

Moreover, the law pertaining to when an arbitration award may be vacated dictates, in this instance, that the plaintiffs' application must be denied. We are dealing with an unrestricted submission, by the parties, as to whether the Board of Police Commissioners erred in denying pension benefits to Officer Kurowski.

In consensual arbitration, when the parties frame the issues to be resolved and define the scope of the arbitrator's powers, the parties are generally bound by the resulting award. Bic Pen Corporation v. Local No. 134, 183 Conn. 579, 584 (1981). "The party challenging the award bears the burden of producing evidence sufficient to invalidate or avoid it, and only upon a showing that it falls within the proscriptions of sec. 52-418 of the General Statutes, or procedurally violates the parties will the determination of an arbitrator be subject to judicial inquiry." O & G/ O'Connell Joint Venture v. Chase Family Limited Partnership No. 3, 203 Conn. 133, 145-146 (1987).

In their application, the plaintiffs rely on sec. 52-418(a)(4) claiming that the arbitrators "exceeded their powers or so imperfectly executed them that a

mutual, final and definite award upon the subject matter submitted was not made." "In deciding whether an arbitrator has exceeded his power, we need only examine the submission and the award to determine whether the award conforms to the submission. Bic Pen Corporation v. Local No. 134, supra, 584. "Unless the submission provides otherwise, an arbitrator has authority to decide factual and legal questions, and courts will not review the evidence, or, where the submission is unrestricted, the arbitrator's determination of legal questions. O & G/O'Connell Joint Venture v. Chase Family Limited Partnership No. 3, supra, 154. In this case the award was unrestricted. Clearly, the award conforms to the submission. Assuming, arguendo, that the arbitrators committed errors of law, such errors are not reviewable.

Accordingly, the plaintiff's application to vacate the arbitration award is denied. The defendant's application for an order confirming the award is granted.

BRUCE W. THOMPSON. JUDGE

APPENDIX D

Opinion of the Connecticut State Board of Mediation and Arbitration

CONNECTICUT STATE BOARD OF
MEDIATION AND ARBITRATION
LABOR DEPARTMENT

200 Folly Brook Boulevard
Wethersfield, Connecticut

DATE: November 20, 1987

TRANSMITTAL MEMORANDUM

In the matter of:	Material Transmitted:
CITY OF BRIDGEPORT	
-AND-	ARBITRATION AWARD
AFSCME, COUNCIL 15, LOCAL 1159	
CASE NO. 8283-1-143	

COPIES SENT TO THE FOLLOWING:

Thomas K. Jackson, Esquire
Mrs. Christine W. Mitchell,
Labor Relations Officer
Jackson AT. King, Esquire
Mr. Edward Connelly, President
* Town Clerk
File

jdd

** This decision is filed with you in accordance with Section 31-98, Chapter 560, of the Connecticut General Statutes.

CONNECTICUT STATE BOARD OF
MEDIATION AND ARBITRATION
LABOR DEPARTMENT

200 Folly Brook Boulevard
Wethersfield, Connecticut

DATE: November 20, 1987

TRANSMITTAL MEMORANDUM

In the matter of:	Material Transmitted:
CITY OF BRIDGEPORT	
-AND-	ARBITRATION AWARD
AFSCME, COUNCIL 15, LOCAL 1159	
CASE NO. 8283-1-143	

COPIES SENT TO THE FOLLOWING:

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Jackson AT. King, Esquire
Mr. Edward Connelly, President
* Town Clerk
File

jdd

** This decision is filed with you in accordance with Section 31-98, Chapter 560, of the Connecticut General Statutes.

STATE BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD

In the matter of:	CASE NO. 8283-1-143
CITY OF BRIDGEPORT	Award Date: November 20, 1987
-AND-	Hearing Date: July 22, 1987
AFSCME, COUNCIL 15, LOCAL 1159	Location of Hearing: Department of Labor Wethersfield, CT

APPEARANCES:

For the City - Thomas K. Jackson, Esquire

For the Union - Jackson King, Esquire

For the Grievant - Gary A. Mastronardi, Esquire

****

ISSUE

Did the Board of Police Commissioners of the City of Bridgeport err in denying pension benefits to Officer Rudolph Kurowski?

If so, what shall the remedy be?

PERTINENT CONTRACT CLAUSES

PENSION AGREEMENT PLAN A, SECTION 2 E

Effective on and after June 30, 1976, when any employee covered by this Agreement, irrespective of age or term of service, shall have become permanently disabled for the performance of his duties by reason of mental of physical disability resulting from injury received or exposure endured in the performance of his duty, the Board of Police Commissioners shall have the power to retire such employee from the Police Department and such retiree shall be entitled to receive from the pension fund provided for in Section 115 of Number 461 of the Special Acts of 1907, a yearly amount, payable monthly, either as determined by said Board but not less than one-half or more than two-thirds of the maximum yearly compensation currently being paid during the time he is receiving such amount to members of said department in the same position which he held at the time of his retirement, or as determined in accordance with the provisions of Subsection B of this section, which ever is greater,

provided, during such period of disability and until the date of retirement, such employee shall receive his regular and usual salary or wages from the City.

STATEMENT OF THE CASE

The arbitration matter arise out of a claim by Police Officer Rudolph Kurowski for a disability pension due to hypertension, which claim was denied by the Board of Police Commissioners of the City of Bridgeport.

The material facts are substantially undisputed. Officer Kurowski, then age 27, became a member of the Bridgeport Police Department on April 1, 1969, having satisfactorily completed a physical examination. He was a patrol officer working rotating shifts, with no disciplinary actions or extended loss of work time on his record.

Officer Kurowski was involved in a motor vehicle accident on April 13, 1981 and was hospitalized for four days for a cervical spine sprain. He was treated with cervical traction and discharged with a cervical collar. His blood pressure was elevated (164/120, Joint Exhibit 13) and he had been hypertensive for at least one year (Joint Exhibit 2).

Officer Kurowski did not return to work for the next eight months and became gainfully employed elsewhere on or about November 30, 1981 (finding and award in Workers' Compensation case, Joint Exhibit 10). That employment was as a teacher in the Norwalk school system (transcript p.8). On December 21, 1981, he reported for work at the police department and was assigned to the Complaint Bureau to work on the day shift. He expressed a desire to work the 4 p.m. to midnight shift and declined to work on the day shift. December 21, 1981 is the only day that Officer Kurowski worked at the Bridgeport Police Department after his accident of April 13, 1981.

Thereafter, Officer Kurowski was regularly seen by physicians for his hypertension. In a series of medical reports from December 22, 1981 to July 9, 1982 (Joint Exhibit 3, 4, 5, 6, 7, 8, 9, and 12) Doctors Nelson, Lucia and Lebowitz set forth their findings based on their interviews and examinations of Officer Kurowski.

On June 16, 1982, Officer Kurowski was suspended by the Police Department on the ground that while receiving full pay on injury leave from the department,

he was employed full-time by the Norwalk Board of Education, and part-time as a driver of a sight-seeing bus. His employment was terminated by the Board of Police Commissioners on July 13, 1982. He filed a grievance as to his termination which was denied by the State Board of Mediation and Arbitration (the hearing panel did not include any members of the present panel).

One June 30, 1982, Officer Kurowski applied for a disability pension, citing the Heart and Hypertension Act (Connecticut GS 7-422) and filed a corrected application on July 2, 1982. The Board of Police Commissioners denied his application and the question before this panel is whether his pension application was properly denied.

DISCUSSION

The panel's role in this proceeding is to conduct a hearing de novo on the question presented to the Board of Police Commissioners of the City of Bridgeport an to make an award based thereon. It is not to review the record of the earlier proceeding - in the manner of an appellate court - and determine whether procedural or other errors may have led the board to

an improper conclusion.

On the basis of the transcript before us (City Exhibit G) the Board of Police Commissioners could hardly be said to have afforded due process of law to Officer Kurowski in the conduct of the July 13, 1981 hearing on his application for a disability pension. It seems clear that his attorney would not have been given any chance to speak at the hearing had not Superintendent Walsh stated "I think it would be proper for him to comment at this point". Counsel's subsequent attempts to address the board were interrupted and he did not have a fair opportunity to present his case to the Board of Police Commissioners.

Our decision in this matter is not based upon the record at the hearing of the Board of Police Commissioners but on the testimony and the exhibits submitted at a hearing de novo on July 27, 2987. The material facts, as noted above, were largely undisputed.

The Heart and Hypertension Act (GS 7-433) relieves firefighters and police officers suffering from hypertension or heart disease of the necessity of proving that the condition was brought about by the

employment. Pursuant to GS-7433, Officer Kurowski was awarded Workers' Compensation benefits on November 5, 1982 for the period of April 13 - November 30, 1981 (Joint Exhibit 10), and on June 19, 1984 found to have a "12 1/2%" permanent impairment of the cardiovascular system due to his essential hypertension".

The issue on an application for a disability pension under plan A of the Pension Agreement (Joint Exhibit 1) is whether the employee:

> "shall have become permanently disabled for the performance of his duties by reason of mental or physical disability resulting from injury received or exposure endured in the performance of his duty"

GS-7433c creates a statutory presumption that hypertension or heart disease is job related, relieving the employee of any proof requirements as to casual connection between the medical condition and employment. It does not establish a statutory right to disability benefits. Revoir vs. New Britain 2 Conn App. 255 (1984).

It was not claimed in this proceeding that the permanent partial disability awarded Officer Kurowski

in the Workers' Compensation proceedings in June 1984 established that he was permanently disabled for police work. To support his application for a disability pension, Officer Kurowski relied primarily upon a report from Dr. Nelson, his physician, dated March 31, 1982 (Joint Exhibit 8) and a report from Dr. Lebowitz, the city's examining physician, dated May 28, 1982 (Joint Exhibit 9).

The relevant excerpt from the report of Dr. Nelson is as follows:

> Mr. Kurowski represents a significant risk over time for a complication of his disease. He should not be working in the police department for both his own health as well as the protection of the department. The chance of this patient having a job related impairment in the high stress position he holds is quite high and it is clearly not wise to allow vascular complications to occur before concluding this.

The relevant excerpt from the report of Dr. Lebowitz is as follows:

> I would agree with Mr. Kurowski's physician that this man's personality, emotional prob-

lems and hypertensive disease are such that he should not be employed as a policeman and that he should retire from the force. This, however, is not because of any present disability, but because of fear of future problems which might cause injury to Mr. Kurowski or other people: I do believe that there are many forms of gainful employment that Mr. Kurowski could engage in. I also feel that his blood pressure could be brought under better control and in view of his admitted anxiety that he might benefit from psychiatric evaluation and instruction in relaxation techniques.

There are two difficulties with the medical evidence upon which Officer Kurowski relies. The first is that neither physician stated that he was "permanently disabled for the performance of his duties". Indeed Dr. Lebowitz states that "there are no findings to suggest that Mr. Kurowski has suffered any permanent disability as a result of his hypertensive disease." The two physicians agree that he should not be working as a policeman - Dr. Nelson citing "the high stress position he holds" and Dr. Lebowitz citing his

"personality, emotional problems and hypertensive disease". Both physicians were primarily concerned with future risks to the officer and the department.

As counsel for Officer Kurowski points out in his brief, the trier of fact may conclude by inference that an injury is permanent even though there is no medical testimony to substantiate it (citing, among other cases, Royston v. Factor, 1 Conn. App. 576). The crucial question is not, however, whether Officer Kurowski has a permanent condition but whether he was permanently disabled for performing police work.

Dr. Nelson's report of July 9, 1982 (Joint Exhibit 12) - which was four days before the hearing - concludes the "Mr. Kurowski could engage in regular police duties only at significantly increased risk. Regular police duty would clearly not be an advisable recommendation". Whether he could have satisfactorily performed light duty work in the department no one can say, Officer Kurowski having left his light duty assignment after one day. He stated that he was willing to work in the Complaint Bureau only on the 4-12 shift, so that he could work another job (transcript p. 10). There is no claim that working in the Complaint Bureau is more

stressful in the 8-4 shift than in the 4-12 shift.

The second difficulty with the medical evidence is more decisive. It is clear from all of the 1982 medical reports that the examining physicians believed that Office Kurowski was then working in the police department. They noted a number of high blood pressure readings during this period and reports attribute these and other signs of hypertension to his work in the police department. These interpretations are based on misinformation, inasmuch as Officer Kurowski did only one day (December 21, 1981) of police work after April 13, 1981. The evidence upon which Officer Kurowski relies to establish that he was "disabled for the performance of his duties" is tainted. The physicians believed that the hypertense man they were examining was working as a police officer. He did not tell them that he was employed full-time as a teacher in Norwalk and part-time as a tour bus driver - and had done but one day of police work since April 1, 1981.

Thus there is no credible medical evidence that Officer Kurowski was disabled for the performance of his police duties.

AWARD

There being no credible evidence that Officer Kurowski was disabled for the performance of his duties, the Board of Police Commissioners of the City of Bridgeport did not err in denying his application for a pension.

THE CONNECTICUT STATE BOARD
MEDIATION AND ARBITRATION

By_____
Frank Logue, Esq. Panel Chairperson
Public Member

_____
William Wilson,
Management Member

_____
Michael J. Vernovai, Sr.
Labor Member

APPENDIX E

Connecticut General Statutes Section 7-433c

Benefits For Policemen Or Firemen Disabled Or Dead As A Result Of Hypertension Or Heart Disease

Sec. 7-433c. Benefits for policemen or firemen disabled or dead as a result of hypertension or heart disease. In recognition of the peculiar problems of uniformed members of paid fire departments and regular members of paid police departments, and in recognition of the unusual risks attendant upon these occupations, including unusual high degree of susceptibility to heart disease and hypertension, and in recognition that the enactment of a statute which protects such fire department and police department members against economics loss resulting from disability or death caused by hypertension or heart disease would act as an inducement in attracting and securing persons for such employment, and in recognition, that the public interest and welfare will be promoted by providing such protection for such fire department and police department members, municipal employers shall provide compensation as follows: Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical

examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive that same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment. If successful passage of such physical examination was, at the time of his employment, required as a condition for such employ-

ment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provision of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, the term "municipal employer" shall have the same meaning and shall be defined as said term is defined in section 7-467.

APPENDIX F

Petition For Certification To

Connecticut Supreme Court

A.C. 7847 : SUPREME COURT

RUDOLPH P. KUROWSKI, AFSCME : STATE OF CONNECTICUT
COUNCIL 15, LOCAL 1159

v.

CITY OF BRIDGEPORT : APRIL 20, 1990

PLAINTIFF - APPELLANT RUDOLPH P. KUROWSKI'S
PETITION FOR CERTIFICATION BY THE
CONNECTICUT SUPREME COURT

Pursuant to Practice Book Section 4126 et seq, the plaintiff-appellant, Rudolph P. Kurowski, respectfully petitions the Supreme Court of the State of Connecticut for certification of my case for review. This certification is brought by Rudolph P. Kurowski only. The AFSCME handled my arbitration hearing only. They refused to appeal to the Superior Court and the Appellate Court. The AFSCME did not want to get involved.

I. STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Did the Appellate Court err in determining that a violation of General Statues F-433c and the violation of the doctrine of collateral estoppel did not constitute adequate grounds to vacate the arbitrable

award in this case because the submission in this instance was unrestricted? They also erred in not looking into public policy of this state.

2. It is no secret that the judicial; system protects the City of Bridgeport because of their financial problems. This court should throw out the "Unrestricted Submission" in my case on the grounds that the Appellate Court review and arbitrator's decision were tainted by nepotism and friendship. The Appellate Court took the case on merit rather than argument. Only "Unrestricted Submission" was discussed.

3. I am asking the Connecticut State Supreme Court to declare "Unrestricted Submission" unconstitutional. It violates legal constitutional rights by allowing arbitrators, who can be corrupt or incompetent, rule on legal issues. The arbitrators can say, "we do not believe the evidence" and the employee could suffer the rest of his/her life.

II. STATEMENT OF BASIS FOR CERTIFICATION

1. The issues in this petition for certification are both unique and substantial. To the best of my knowledge, similar issues have never been considered

by this Court therefore, this Court should hear this case because other people could find themselves in a similar situation as I find myself in today.

2. The Appellate Court's decision in my case appears to be tainted by nepotism. Judge Lavery of the Appellate Court first appeared on the panel. He if a friend of lawyer Thomas Jackson who is representing the City of Bridgeport in this case. Judge Lavery has done work for Mr. Jackson's family. This in itself constitutes playing favoritism even though Judge Lavery was removed from the panel.

3. The Appellate Court's decision not to look into laws of evidence and public policy is in itself an easy way out. The "unrestricted submission" clause is a farce. What better way can you use to deny an employee their disability pension? Even though the evidence is real, an arbitrator or court could just say there is no evidence or they didn't believe the evidence. In my case, they have gotten away with it. I am asking that the State Supreme Court look into my case.

4. What better way can you use to make sure an employee gets denied his disability pension from the State Board of Arbitration and Mediation? Rather than

use the ex-mayor of the City of Bridgeport to hear your case, why not use Mr. Frank Logue, lawyer and ex-mayor of New Haven? He is bias toward Heart and Hypertension. He was very friendly towards the city personnel calling Superintendent Walsh by his first name. All three arbitrators knew the city personnel. The arbitrators and the city personnel were enjoying each other's company.

Who are these arbitrators to rule that all of the medical evidence was based on misinformation, when in fact the Workmen's Comp. Commissioner, who deals with this everyday, ruled that I was disabled from police duties? There were eleven exhibits, including a hospital report, which indicated that I suffered from essential hypertension. The City of Bridgeport caused my problem. I worked twelve years "swinging" the clock. Ever week I would be on a different shift. I am asking that the State Supreme Court look into this matter. I believe the arbitrators were picked by the City of Bridgeport to make sure I was denied my disability pension.

STATEMENT OF FACTS

1. On April 1, 1969, plaintiff Rudolph P. Kurowski, 26 years of age, became employed as a regular uniformed member of the Bridgeport Police Department. I underwent a pre-employment physical which showed no evidence of hypertension and heart disease.

2. On April 13, 1981, while still employed by the Bridgeport Police Department, a medical examination revealed the presence of hypertension.

3. In May, 1982, a further examination revealed essential hypertension and the city doctors said I should not return to police duties.

4. On June 30, 1982, I applied to the Board of Police Commissioners of the Bridgeport Police Department for a disability pension under the Heart and Hypertension Act, General Statutes Section 7-433C.

5. On July 13, 1982, my application was heard by the Board of Police Commissioners and denied on the grounds that the medical evidence did not support my claim that I was permanently disabled from performing police duties. Because the word permanent wasn't in the report, they assumed otherwise. There were synonyms in those reports that meant the same as

permanent.

6. On July 15, 1982, Worker's Compensation Commission held a hearing on my compensation claim under Section 7-433C. (All exhibits and hospital reports were used as evidence).

7. On November 15, 1982, Worker's Compensation Commission issued an award granting me total disability benefits in accordance with General Statutes Section F-433C. The City never appealed the decision.

8. In April, 1984, Workmen's Compensation Commission grants a monetary judgment for approximately three years. The City never appealed the decision.

9. On July 22, 1987, more than five years later, a hearing was conducted by the State Board of Arbitration and Mediation lead by Ex-mayor lawyer Frank Logue and his buddies. Mr. Logue, being a city official, was biased toward Heart and Hypertension.

10. On November 20, 1987, as expected, the Board of Arbitration and Mediation issued an award denying me my disability pension and in essence saying that they did not believe the doctor's reports. The ruling was a farce. I believe it was trickery and the ruling was in total defiance of the medical reports and

Workmen's Compensation rulings.

11. On December 18, 1987, an application was filed in Superior Court for the Judicial District of Fairfield at Bridgeport seeking an order of the court pursuant to General Statutes Section 52-418(a)(4) amended by P.A. 87-19 vacating the arbitral award.

PROCEEDING BEFORE SUPERIOR COURT

12. On February 7, 1989, after a hearing on two foregoing applications, the trial court issued a memorandum decision denying plaintiff-Rudolph P. Kurowski's application for an order confirming the award.

13. Judge Thompson held that the arbitral decision did not violates Section F-433C of the General Statutes, or the public policy of the state embodied therein. Even though I received an award, the trial judge said that I failed to prove "permanent" disability from police work and it did not violate the doctrine of collateral estoppel. THERE ARE SYNONYMS THAT MEAN THE SAME AS "PERMANENT". THE DOCTORS DID NOT KNOW THAT THE WORD PERMANENT HAS TO BE IN THE REPORT. THEY TOLD THE CITY OF BRIDGEPORT THAT I CANNOT PERFORM POLICE DUTIES AND I SHOULD RETIRE FROM THE FORCE. IT

IS THE SAME AS SAYING I AM PERMANENTLY DISABLED. WORKMEN'S COMPENSATION COMMISSIONER RULINGS WERE JUSTIFIABLE. THE ARBITRATORS AND COURT WERE OUT TO PROTECT THE CITY OF BRIDGEPORT BECAUSE OF THEIR FINANCIAL PROBLEMS.

14. Judge Thompson held that because the case has been submitted for arbitration on an "unrestricted" basis, the court was powerless to reverse the decision. This is nonsense. Unrestricted submission is a fraudulent tool to deliberately and maliciously deny an employee his right to certain claims. The unrestricted submission claim is illusory.

PROCEEDING BEFORE APPELLATE COURT

15. On March 13, 1990, the Appellate Court denies my claim to vacate an arbitration award denying a claim for disability pension benefits. The Appellate Court attempts to use Judge Lavery to hear my case. He is from the Bridgeport area and has known Mr. Thomas Jackson for a number of years. Judge Lavery took himself off the panel, but his influence could have played a large part in the decision of the other judges. The only issue that the Appellate Court talked about pertained to the "Unrestricted Submission". (Refer to

appendix - March 13, 1990 page 13A 21 Conn. App. 28). All other arguments made by my attorney, Gary Mastronardi, were sidestepped and swept under the rug.

ARGUMENT

16. Just because it is an unrestricted submission, this is not an adequate basis not to review a public policy violation. If you do not follow a statute, you violate a public policy and if you violate the doctrine of collateral estoppel, you also violate public policy. The evidence clearly established violation of both. Just because the submission was unrestricted, that does not mean public policy violations can be overlooked

It is now settled law that an arbitration award "which violates state statutes or contravenes the public policy of the state" is within reach of Section 52-428(a)(4). New Haven Board of Education Teachers 179 Conn. 184, 181 (1979); and Avco Corporation v. Pretiska , 22 Conn. Sup. 475, 481 (1961). In the Avco case, the submission was unrestricted, yet the court had no problems finding the existency of public policy violations.

17. Please, do not let these unscrupulous

arbitrators take me down the hill. Look this case over. I am entitled to a disability pension. Please, do not let the "Unrestricted Submission" trick stand up. Please look into the public policy of the state.

UNRESTRICTED SUBMISSION SCENARIO

An employer decides to deny a pension to the employee even though the evidence for the disability is overwhelming. The employer knows that is he gets favorable arbitrators, no matter what the evidence is, the claim can be denied because the arbitrators can just say they do not believe the evidence. The employee appeals to the court. The court denies the claim, even though the evidence is overwhelming, citing unrestricted submission rule. This claim goes one step higher and is also denied. Will the State Supreme Court allow possible appointed employer arbitrators to rule? I hope not. There are public policy provision to avoid corruption. The people responsible for assigning the arbitrators to certain cases should be investigated.

RESPECTFULLY SUBMITTED

THE PLAINTIFF-APPELLANT
Rudolph P. Kurowski
73D Riverbend Road
Stratford, Connecticut 06497
(203) 378-6491
PRO-SE

APPENDIX G

Petition For Motion For Reconsideration

A.C. 7847 : SUPREME COURT

RUDOLPH P. KUROWSKI : STATE OF CONNECTICUT

COUNCIL 15, LOCAL 1159

v.

CITY OF BRIDGEPORT : MAY 18, 1990

PLAINTIFF - APPELLANT RUDOLPH P. KUROWSKI'S

MOTION FOR RECONSIDERATION

The petitioner, Rudolph P. Kurowski, hereby moves for re-argument and reconsideration of this Court's decision denying certification. The basis for this request is as follows:

STATEMENT OF FACTS

1. On April 1, 1969, plaintiff Rudolph P. Kurowski, 26 years of age, became employed as a regular uniformed member of the Bridgeport Police Department. I underwent a pre-employment physical which showed no evidence of hypertension and heart disease.

2. On April 13, 1981, while still employed by the Bridgeport Police Department, a medical examination revealed the presence of hypertension.

3. In May, 1982, a further examination revealed essential hypertension and the city doctors said I should not return to police duties.

4. On June 30, 1982, I applied to the Board of Police Commissioners of the Bridgeport Police Department for a disability pension under the Heart and Hypertension Act, General Statutes Section 7-433C.

5. On July 13, 1982, my application was heard by the Board of Police Commissioners and denied on the grounds that the medical evidence did not support my claim that I was permanently disabled from performing police duties. Because the word permanent wasn't in the report, they assumed otherwise. There were synonyms in those reports that meant the same as permanent.

6. On July 15, 1982, Worker's Compensation Commission held a hearing on my compensation claim under Section 7-433C. (All exhibits and hospital reports were used as evidence).

7. On November 15, 1982, Worker's Compensation Commission issued an award granting me total disability benefits in accordance with General Statutes Section 7-433C. The City never appealed the decision.

8. In April, 1984, Workmen's Compensation Commission grants a monetary judgment for approximately three years. The City never appealed the decision.

9. On July 22, 1987, more than five years later, a hearing was conducted by the State Board of Arbitration and Mediation led by Ex-mayor lawyer Frank Logue and his buddies. Mr. Logue, being a city official, was biased toward Heart and Hypertension.

10. On November 20, 1987, as expected, the Board of Arbitration and Mediation issued an award denying me my disability pension and in essence saying that they did not believe the doctor's reports. The ruling was a farce. I believe it was trickery and the ruling was in total defiance of the medical reports and Workmen's Compensation rulings.

11. On December 18, 1987, an application was filed in Superior Court for the Judicial District of Fairfield at Bridgeport seeking an order of the court pursuant to General Statutes Section 52-418(a)(4) amended by P.A. 87-19 vacating the arbitral award.

12. On February 7, 1989, after a hearing on two foregoing applications, the trial court issued a

memorandum decision denying plaintiff-Rudolph P. Kurowski's application for an order confirming the award.

13. Judge Thompson held that the arbitral decision did not violates Section 7-433C of the General Statutes, or the public policy of the state embodied therein. Even though I received an award, the trial judge said that I failed to prove "permanent" disability from police work and it did not violate the doctrine of collateral estoppel. THERE ARE SYNONYMS THAT MEAN THE SAME AS "PERMANENT". THE DOCTORS DID NOT KNOW THAT THE WORD PERMANENT HAS TO BE IN THE REPORT. THEY TOLD THE CITY OF BRIDGEPORT THAT I CANNOT PERFORM POLICE DUTIES AND I SHOULD RETIRE FROM THE FORCE. IT IS THE SAME AS SAYING I AM PERMANENTLY DISABLED.

14. Judge Thompson held that because the case has been submitted for arbitration on an "unrestricted" basis, the court was powerless to reverse the decision. Unrestricted submission is a fraudulent tool to deliberately and maliciously deny an employee his right to certain claims.

15. On March 13, 1990, the Appellate Court denies my claim to vacate an arbitration award denying a claim

for disability pension benefits.

LEGAL REASON FOR GRANTING PETITION

The Appellate Court placed under emphasis on the fact that the arbitral submission in this case was "Unrestricted". The fact that the arbitral submission was unrestricted did not entitle the arbitrators, trial court, and the Appellate Court to turn their backs on clear public policy violations. See Avco v. Preteska 174 A.2684, 686-687 (1961) Submission Unrestricted; yet, court held that arbitrators may not take unto themselves, whether or not by assent of the parties, authority to act against the public interest. As states in Tansy v. Elmore-Cooper Livestock Commission, 113 Mo App. 409, 422, 87 S.W. 614, 618, "the laws in support of a general public policy cannot be set aside by arbitration." Awards which contravene the public policy of an arbitrator and are illegal and unenforceable. THE CLAIM IN THIS CASE IS IDENTICAL.

RESPECTFULLY SUBMITTED

THE PLAINTIFF-APPELLANT
Rudolph P. Kurowski
73D Riverbend Road
Stratford, Connecticut 06497
(203) 378-6491
PRO-SE

APPENDIX H

1982 Worker's Compensation

Finding And Award

RUDOLPH P. KUROWSKI	: CORAM
52 Brittany Avenue	
Trumbull, Connecticut	: WORKER'S COMPENSATION
CLAIMANT	COMMISSIONER
	:
v.	: FOURTH COMPENSATION
	DISTRICT
CITY OF BRIDGEPORT	
(Police Department)	
(Self-Insured)	
Bridgeport, Connecticut	
Employer	
RESPONDENT	: NOVEMBER 5, 1982

Appearances:

The claimant was represented by Gerald F. Stevens, Esq., 31 Cherry Street, Milford, Connecticut.

The respondent employer was represented by C. David Munich, Esq., 202 State Street, Bridgeport, Connecticut.

FINDING AND RULING

1. Pursuant to proper notice to all parties,

hearings in the above captioned matter were held by the undersigned at his office in Bridgeport, Connecticut.

2. The claimant became employed as a regular uniformed member of the Police Department of the respondent employer, City of Bridgeport, on April 1, 1969.

3. Prior to such employment he underwent a pre-employment physical which showed no evidence of hypertension or heart disease.

4. On or about April 13, 1981, while still employed by respondent, City of Bridgeport, medical examination of the claimant revealed the presence of hypertension.

5. Further medical examination of the claimant in May, 1982 revealed that the claimant had essential hypertension and should not return to police duties.

Whereupon It Is Adjudged, Awarded and Decreed That respondent, City of Bridgeport, pursuant to and in accordance with the provisions of Section 7-433c of the Connecticut General Statutes pay to the claimant, Rudolph Kurowski, temporary total disability benefits from April 13, 1981 to November 30,1981 with proper monetary adjustment made in relation to sick pay received during said period.

Further It Is Adjudged, Ordered and Decreed That since claimant, as of November 30, 1981 has secured other employment that determination be made if further benefits may be due claimant pursuant to Section 31-308a, Connecticut General Statutes.

Further It Is Ordered That all medical bills incurred by the claimant relating to his treatment for hypertension be paid by respondent employer.

ACTING COMMISSIONER

FOURTH COMPENSATION DISTRICT

APPENDIX I

1984 Worker's Compensation First Suplemental Finding And Award

RUDOLPH P. KUROWSKI	: CORAM
52 Brittany Avenue	
Trumbull, Connecticut	: WORKER'S COMPENSATION
CLAIMANT	COMMISSIONER
	:
v.	: FOURTH COMPENSATION
	DISTRICT
CITY OF BRIDGEPORT	
(Police Department)	
(Self-Insured)	
Bridgeport, Connecticut	
EMPLOYER	
RESPONDENT	: JUNE 10, 1984

APPEARANCES:

The claimant was represented by Gerald F. Stevens, Esquire, 31 Cherry Street, Milford, Connecticut.

The respondent employer was represented by Mark Anastasi, Esquire, 202 State Street, Bridgeport, Connecticut.

FIRST SUPPLEMENTAL

FINDING AND RULING

1. Pursuant to proper notice to all parties,

hearings in the above captioned matter were held by the undersigned at his office in Bridgeport, Connecticut on November 18, 1983, and on March 7, 1984.

2. By finding and Award dated November 5, 1982 the Claimant was found to be eligible for benefits under Section 7-433c of the Connecticut General Statutes.

3. The Claimant has been found to be disabled from police duties due to a condition of essential hypertension.

4. The Claimant is entitled to benefits under 31-308(a) of the Connecticut General Statutes for the period December 1, 1981 to November 17, 1983 in accordance with Claimant's Exhibit A.

5. The Claimant is found to have reached maximum medical improvement as of November 18, 1983 and is found to have a twelve and one-half percent (12-1/2%) permanent impairment of the cardiovascular system due to his essential hypertension entitling Claimant to 97.5 weeks of compensation at his rate of $246.73 per week.

Wherefore, it is Adjudged, Awarded and Declared;

(a) That the Respondent shall pay Claimant 31-308(a) benefits from December 1, 1981 to November

17, 1983 in accordance with Claimant's Exhibit A and subject to the adjustments set forth therein;

(b) That the respondent pay the Claimant 97.5 weeks of compensation at Claimant's rate of $246.73, representing 12-1/2% permanent impairment of the cardiovascular system, commencing November 18, 1983.

CHAIRMAN - ACTING FOR

THE FOURTH DISTRICT

APPENDIX J

Memorandum Of Law In Opposition To Dismiss Petitioner's Claim To Superior Court Hearing On Disability Pension

NO. CV-82-203733S SUPERIOR COURT

RUDOLPH KUROWSKI :

vs. JUDICIAL DISTRICT OF FAIRFIELD AT BRIDGEPORT

BOARD OF POLICE COMMISSIONERS : SEPTEMBER 13, 1984

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

I - The Plaintiff's complaint alleges breach of contract and raises constitutional claims.

The Plaintiff further alleges that he is entitled to the benefits of 7-433c, C.G.S. Paragraph 5 of the Complaint. This statement commonly referred to as the "heart/hypertension" law confers special benefits, "...an outright bonus to qualifying policemen and firemen..." Plainville v. Travelers Indemnity Co., 178 Conn 664, 668.

The Plaintiff in Paragraph 6 alleges that he applied for a work related disability pension which was denied by the Defendant, Paragraph 8.

The Plaintiff in Paragraph 9 alleges that the Defendant's denial of his pension is illegal and arbitrary. Thus, the Plaintiff has alleged facts which

if proved would establish a breach of contract.

The Plaintiff claims that the Defendant's denial was in violation of administrative due process, Paragraph 9(d). Thus, the Plaintiff has raised constitutional claims concerning the due process.

The Plaintiff has a right to judicial review of his claims of breach of contract providing a statutory benefit (7-433c) and his claim of an unconstitutional deprivation of property interests. Diaz v. Board of Directors, 2 Conn. App. 43, Connecticut Law Journal, May 29, 1984.

As in Diaz, the Plaintiff herein has alleged that the Defendant breached the pension agreement. In Diaz, id at 46 the court stated:

> "To the extent that the Plaintiff's complaint alleged a breach of the pension agreement the court has jurisdiction over the matter."

That finding of the court in Diaz was reached without reference to specific provisions of the Danbury city ordinance which the court refers to on Page 47 of the decision.

The Plaintiff herein has pleaded a property right under 7-433c, Paragraph 5 of the complaint. Where a

person has a property right entitled to protection under the due process clause that persorhas a right to judicial review. Petrovich vs. Board of Education , 189 Conn. 595, 589.

The fact that the pension agreement provided for a grievance procedure did not prevent the Plaintiff from seeking judicial review of an alleged denial of a property right by breach of contact.

> "Whether or not the plaintiff had any statutory recourse by appeal or otherwise for the wrongful termination of her employment she was not precluded from maintaining an appropriate action for breach of contract." Petrovich v. Board of Education, id at 589, citing Cahill v. Board of Education, 187 Conn. 94, 103, 44 A.2d 907 (1982).

As in Diaz, the Plaintiff herein alleged that he has been deprived of property rights by the Defendant's actions. This claim is entitled to judicial review. Diaz v. Board of Directors, supra at 43.

The Plaintiff has a right to show he had a vested monetary interest in the pension fund which has been denied him without due process.

The Defendant claims that the Plaintiff has no right to judicial review and the Plaintiff's sole remedy is the grievance procedure in Section 3 of the Pension Agreement. That section applies to a "...dispute...concerning the application, administration or interpretation of the provisions of this agreement or concerning the benefits or rights established or protected thereunder."

The action before the court claims a breach of contract and denial of due process in regard to a property right.

The Board of Mediation and Arbitration, as an administrative agency, does not have the authority to consider constitutional issues. See Caldor, Inc. v. Thornton , 191 Conn. 336, 344.

II - The Second Count of the Plaintiff's complaint raises an independent right of judicial review.

Each of the arguments relative to breach of contract and lack of due process apply with equal force to the second count of the complaint. The Plaintiff is entitled to offer proof as to the benefits due him under the Pension Certificate which he alleges to be the holder and beneficiary of in Paragraph 9 of the Second

Count. The Defendant in its answer has left the Plaintiff to his proof on this allegation.

If the plaintiff satisfies the court as to his proof on the issue of the Pension Certificate the Plaintiff would be entitled to benefits thereunder.

The claimed Pension Certificate specifically provides for judicial review:

> "(7) In the event you and/or your dependents do not receive the benefits promised and guaranteed by this Pension Certificate, you and/or your dependents may:
>
> (a) Institute a civil action in a court of competent jurisdiction for enforcement and protection of the pension benefits provided for herein; or
>
> (b) Initiate the grievance and arbitration procedure of the applicable collective bargaining agreement between the City of Bridgeport and Bridgeport Police Local 1159."

Pension Certificate (Plan A-1), Page 6, Exhibit 4, Plaintiff's Motion for Summary Judgment, June 21, 1983.

Further, under the terms of the Pension Certificate, the Defendant specifically waived claims or defenses that would deny or defeat the Plaintiff's claim. The only exception is qualification.

> "(8) The City hereby agrees to waive any claim or defense it may now or hereafter have, which such claim or defense acts to deny or defeat any claim any present employee may have to collect and be awarded any benefits he, she or a survivor, dependent and/or heir may have under the 1973 Pension Agreement or the Agreement executed contemporaneously herewith, but such shall not be construed to waive the City's right to contest that a particular individual has not met the qualification requirements for pension benefits as specified in the 1973 agreement or the Agreement executed contemporaneously herewith." Pension Certificate, id., Page 6, 7.

As the Court stated in Diaz, Supra at 48, whether or not there is merit to the Plaintiff's claim, he is entitled to have it heard.

Accordingly, the Defendant's Motion to Dismiss

should be denied.

THE PLAINTIFF, Rudolph Kurowski

BY:_____
GERALD F. STEVENS
Stevens, Moran, Carroll & Carveth
His Attorneys

CERTIFICATION

I hereby certify that a copy of the foregoing Plaintiff's Supplemental Memorandum if Law in Opposition to Defendant's Motion to Dismiss, was furnished by mail to Attorney Thomas Jackson, c/o Corporation Counsels, Office, City of Bridgeport, 202 State Street, Bridgeport, Connecticut on this 13th day of September, 1984.

_____
GERALD F. STEVENS
Commissioner of the Superior Court

APPENDIX K

Avco Corporation

v.

Peter Preteska et al.

22 Conn. SUP. 475

AVCO CORPORATION

v.

Peter PRETESKA et al.

No. 112785.

Superior Court of Connecticut

Fairfield County, at Bridgeport,

June 30, 1961

An employer, which had discharged an employee who had pleaded guilty to the offense of policy playing on the employer's premises, made an application to vacate an arbitration award directing the employer to reinstate the employee with back pay, and a counter motion was made to confirm the award. The Superior Court, Parmelee, J., held that the arbitration award was void as contrary to public policy and should be vacated.

Decision and award of arbitrators vacated.

1. Arbitration and Award 29

Agreement for submission of issue or issues to arbitrators constitutes charter of entire arbitration

proceeding and defines and limits issues to be decided by arbitrators.

2. Arbitration and Award 73

Court must uphold arbitration award except when arbitrators have exceeded their powers C.G.S.A. § 52-418.

3. Contracts 108(1)

Contract which contravenes public policy will be declared illegal and unenforceable.

4. Lotteries 20

"Policy playing" is method of gambling by betting as to what numbers will be drawn in lottery, C.G.S.A. § 53-298.

See publication Words and Phrases, for other judicial constructions and definitions of "Policy Playing".

5. Arbitration and Award 48

Arbitration awards, which contravenes public policy of state, exceed powers of arbitrator and are illegal

and unenforceable.

6. Labor Relations 459

Award of arbitrators directing employer to reinstate with back pay employee who had pleaded guilty to offense of policy playing on employer's premises was void as contrary to public policy and would be vacated. C.G.S.A. §§52-118, 53-298.

Pullman, Comley, Bradley & Reeves, Bridgeport, for plaintiff.

Baker & Diamond, Stamford, for defendant International Union, United Automobile, Aircraft and Agricultural Implement Workers of America.

Meuser, Gentile & Biafore, Bridgeport, for defendants.

PARMELEE, Judge.

This is an application to vacate an arbitration award of a board of arbitration selected from a panel furnished by the American Arbitration Association. A counter motion to confirm the award was filed by the respondents Peter Preteska (the employee involved), the International Union, United Automobile, Aircraft

and Agricultural Implement Workers of America, and its Local 1010. The board held hearings on the union appeal from a company decision discharging its employee Peter Preteska. The award of the majority (one dissent) directed the reinstatement of said Peter Preteska with back pay specified as $3,531.04. Preteska had been discharged for violation on company premises of § 53-298 of the General Statutes, entitled "Policy Playing." Preteska entered a plea of guilty to a violation of a company rule governing gambling on the premises. The evidence of violation of said § 53-298 was found on his person and in his constructive possession on the tote truck which he regularly operated on the premises. It consisted of several small slips of paper containing approximately forty three-digit numbers identified by Preteska as policy plays, seventeen $1 bills and one $5 bill, three containers in which were found a two-foot length of adding machine tape on which there were forty-five three-digit numbers identified by Preteska as a policy play handicap, several slips of paper containing approximately 100 three-digit numbers identified by Preteska as policy plays, and a policy player's

handicap manual. Some of these records, all of which involved policy playing, Preteska admitted were prepared on company premises and equipment, and even on company time. He conceded this had been going on several times a week for months. The chairman of the board so found.

The issues raised may be divided into two main categories as follows: (1) Did the arbitrator exceed their powers by rendering an award which contravenes the public policy of the state of Connecticut, hence said award being illegal and unenforceable? (2) Did the said board act in excess of its powers in awarding back wages in the amount of $3,531.04?

[1] The plaintiff and the defendant Local 1010-UAW have entered into an agreement, in evidence as exhibit A. Article 5, § 1, of said agreement provides: "The company shall have the right to discharge or discipline employees for just cause." It is fundamental that an agreement for the submission of an issue or issues to arbitrators constitutes the charter of the entire arbitration proceedings. Niles-Bement-Pond Co. v. Amalgamated Local 405, 140 Conn. 32, 36, 97 A.2d 898.

Such an agreement defines and limits the issues to be decided by the arbitrators. International Brotherhood of Teamsters, etc.., v. Shapiro, 138 Conn. 57, 68, 82 A.2d 345; Amalgamated Ass'n of Street Electric Railway, etc., v. Connecticut Co., 142 Conn. 186, 191, 112 A.2d 501, 49 A.L.R.2d 891. The company contends that the conduct of the employee on the premises constitutes just cause for dismissal. The defendants claims that whether or not the employee's conduct constitutes just cause for dismissal is a fact to be determined by the arbitrators and that their decision in this regard may not be challenged in this action, particularly since article 4, step 5(c), provides" "The majority decision of the Board of Arbitration shall be final and binding upon the Company and the Union." The defendants further claim that the submission to the arbitrators was based upon the "just cause" phrase in said article 5, § 1, and since it was an unrestricted submission the interpretation of the law and the labor agreement is not subject to judicial review for errors of interpretation.

[2] Application to vacate an award is a special proceeding authorized by statute. Section 52-418 of

the General Statutes provides that an order vacating the award may be made upon the application of any party to the arbitration "(d) if the arbitrators have exceeded their powers." The court must uphold the finality of the award except when it clearly falls within the proscription of said § 52-418.

As it has been pointed out, the submission in this case was unrestricted the agreement providing that the majority decision of the board of arbitration shall be final and binding upon the company and the union. There was nothing which required the arbitrators to decide the matter "according to law." (Emphasis added). By the terms of the agreement, arbitration is permissive, not mandatory, the parties themselves controlling the contract and the form in which the submission is made. United Electrical Radio & Machine Workers v. Union Mfg. Co., 145 Conn. 285, 141 A.2d 479.

[3] However, the case now before us presents facts which are clearly distinguishable from many of the arbitration cases which have been heard in this state. A question of public policy is raised. The agreement entered into between these parties is a contract. It is a rule of law that a contract which contravenes

public policy will be declared illegal and unenforceable. Beit v. Beit, 135 Conn. 195, 63 A.2d, 161, 10 A.L.R.2d 734; Westville & Hamden Loan Co. v. Pasqual, 109 Conn. 110, 116, 145 A. 758; Smith v. Delaney, 64 Conn. 264, 276, 29 A. 496; Connors v. Connolly, 86 Conn. 641, 656, 86 A. 600, 45 L.R.A.N.S., 564; Hanford v. Connecticut Fair Ass'n., 92 Conn. 621, 623, 103 A. 838. In Amalgamated Association v. Connecticut Co., supra, 142 Conn. 191, 112 A.2d at page 503 which involved an application to vacate an arbitration award, the court said: "If it [the contract] specifies methods of procedure for the arbitration, the arbitrators will be bound to that procedure unless it is in violation of law or *public policy*" (italics supplied). Black v. Cutter Laboratories, 43 Cal.2d 788, 378 P.2d 905, cert. dismissed, 351 U.S. 292, 76 S.Ct. 824, 100 L.Ed. 1188, approves the court's right to act against a labor arbitration award which contravenes public policy by its construction of a labor agreement.

[4] Section 53-298 is the statute upon which the employee, Preteska, pleaded guilty and was found guilty by the court. The facts show that he was guilty of a violation of this statute while on the company

premises. "Policy playing" is a method of gambling by betting as to what numbers will be drawn in a lottery. State v. Mola, 128 Conn. 407, 409, 23 A.2d 126. State v. Johnson, 140 Conn. 560, 565, 102 A.2d 359, defines "custodian," as one who has temporary physical possession. On the facts in the present case, there is no doubt that the employee, Preteska, was at least a custodian of the articles which were found in his possession. He was therefore guilty of the violation of that statute.

But § 53-298 creates a responsibility beyond that of the person who possesses, keeps, manages or is the custodian, and so forth, of the property described in the statute. The last sentence in said statute reads as follows: "Any owner, mortgagee in possession, lessee or occupant of any building, room, structure or place, or part thereof, who knowingly permits the same to be used or occupied for any of the purposes mentioned in this section, shall be fined not more than one hundred dollars or imprisoned not more than six month or both." This statute places a direct responsibility on the owner or lessee of premises – in this case the employer. The statute expresses the legislative

purpose and public policy of the state in regard to gambling. The employer now is in the position of the occupant of a building who was aware of gambling activities being conducted on the premises. The legislature of our state has laid down the mandate that the occupant of premises (in this place the employer) must police the use of his premises. On the facts as they exist in the instant case, it would appear that the arbitrators have ruled that the employer must furnish both premises and opportunity to such employees to carry on gambling activities, furnishing also the equipment to use in keeping and storing gambling records, and that it must pay its employees for any time lost as a result of arrest, incarceration or conviction of a violation of the state law in this regard. The matter goes deeper than the simple question of the dismissal of Preteska, who readily admits to being a violator of the statute on the premises. The question is primarily whether an employer may take disciplinary action under the "just cause" agreement in the contract against an employee whose violation of the criminal gambling laws also creates a violation on the part of the employer with

knowledge of what is going on.

[5] **Arbitrators may not take unto themselves, whether or not by assent of the parties, authority to act against the public interest. As stated in Tandy v. Elmore-Cooper Livestock Commission, 113 Mo. App. 409, 422, 87 S.W. 614, 618. "[t]he laws in support of a general public policy and in enforcement of public morality cannot be set aside by arbitration." Awards which contravene the public policy of a state exceed the powers of an arbitrator and are illegal and unenforceable.** (Emphasis added). Black v. Cutter Laboratories, 43 Cal.2d 788, 278 P.2d 905, cert. dismissed, 351 U.S. 292, 76 S.Ct. 824, 100 L.Ed. 1188; Michelman v. Michelman, 5 Misc.2d 570, 135 N.Y.S.2d 608; Publishers Assn. v. Newspaper & Mail Deliverers Union, 280 App.Div. 500, 114 N.Y.S.2d 401; Franklin v. Nat. C. Goldstone Agency, 33 Cal.2d 628, 204 P.2d 37; Loving & Evans v. Blick, 33 Cal.2d 603, 204 P.2d 23; Western Union v. American Communications Assn., 299 N.Y. 177, 86 N.E.2d 162; Smith v. Gladney, 128 Tex. 354, 98 S.W.2d 351; 2 Werne, Law and Practice of the Labor Contract, p. 226. The statement of the rule that awards which contravene public policy of a state exceed the

powers of an arbitrator is clearly set forth in Hurd v. Hodge, 334 U.S. 24, 34, 68 S.Ct. 847, 92 L.Ed. 1187, where the court said: **"The power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and applicable legal precedents."** (Emphasis added).

[6] In the light of the undisputed evidence, it is concluded that the interpretation of the "just cause" provision in the contract by the arbitrators – that the conduct of the employee, Preteska, is not subject to disciplinary action by the employer – is void as being contrary to public policy.

In view of the above finding, no back wages should be awarded.

The decision and award of the arbitrators is vacated.